IN THE CIRCUIT COURT FOR BRUNSWICK COUNTY.

CAMP MANUFACTURING COMPANY *v.* VIRGINIA A. YOUNG *et als.*
R. B. WRIGHT *v.* CAMP MANUFACTURING COMPANY.

1. Deeds Conveying Standing Timber.—Growing trees are realty and contracts concerning them are governed by the laws applicable to that kind of property.

2. Same.—Whenever, in an instrument conveying standing timber, there is a clause either prescribing or granting a certain time in which the vendee should, or might, "cut," or "remove," timber, the grantee has no title whatever to any timber not "cut," or "removed," at the expiration of said period.

3. Same.—This doctrine is based upon the intention of the parties as expressed in the entire instrument, and does not apply where there are subsequent provisions in the instrument which negative such intention.

4. Construction—Purpose.—The purpose of all construction is to sustain the intent of the parties and give effect to the same.

5. Same.—Where there is a grant of timber and no time is specified in which it shall be removed, the law presumes that it must be removed in a reasonable time.

6. Same.—The words "when cut," or "at the time of cutting," in timber deeds, referring to the size of the timber, mean that the vendee is entitled to all trees then on the land of the required size at the time of the grant and such others as may attain that size by the time the timber is cut.

7. Same.—Where a deed conveying standing timber gives the grantee five years in which to remove the timber, and provides that if grantee fails to remove the same in five years, he shall have "such further time as he may desire," in which to remove same, provided he shall pay interest on the amount of the purchase money, such extension clause is too indefinite and uncertain to be enforced literally by a court of equity, but it should be read as a part of the deed in order to ascertain the real purpose and intention of the parties.

8. Vendee's Right to Remove Timber.—Y. conveys to C. all pine timber 12 inches in diameter across the tree stump and larger, at the time of cutting, on certain land, with five years in which to remove the same, and the deed provides further, that if grantee shall fail to remove said timber, in said time, he shall have such further time, in which to remove the same, as he may desire; provided, however, that he pay interest to the said parties of the first part, or their assigns, at the rate of 6 per cent. per annum on the amount of the purchase price, from the expiration of the said five years, until he removes the timber. None of the timber is cut during the first period of years, and the vendee pays the interest money each year after the

expiration of said period. Held: That vendee's title to the timber has not reverted to grantor, and that grantee is entitled to a "reasonable time," in which to remove the timber.

9. **Same—Reasonable Time.**—Under the facts and circumstances which appear in the cases at bar, the court ascertains 10 years to be a reasonable time in which the vendee shall remove the timber.

Braxton, Williams & Eggleston and *R. T. Thorp,* for Young and Wright.

Jno. C. Parker, E. P. Buford and *E. R. Turnbull, Jr.,* for Camp Manufacturing Company.

WEST, J. F., Judge.

These two suits, which by consent of parties are heard together, are test cases; and in deciding them the court will apply principles which can arise in more than one hundred other cases, and which will settle the title to standing timber valued at perhaps more than one million dollars. Cause No. 1 will be called the *Young Case,* and Cause No. 2 will be called the *Wright Case.* The Camp Manufacturing Company will be called *Camp.*

STATEMENT OF FACTS.

Camp owns and operates three large lumber manufacturing plants, located in the counties of Dinwiddie, Isle of Wight and Southampton, respectively, in the State of Virginia, with an average daily capacity of over 300,000 feet; to erect which cost him $478,000.00. Camp also owns sixty-five miles of railroad, fourteen locomotive steam engines, one hundred and twenty-one log cars, and one hundred and twenty-two mules and horses, all of the aggregate value of $284,000, which are used in connection with the operation of said plants. He also owns 900,000,000 feet of standing timber located in sixteen counties in the states of Virginia and North Carolina, most of which is remote from railroads which do the business of common carriers in the section in which the timber is located. The two tracts of timber involved in these suits are located ten or twelve miles from such a railroad. And Camp will have to build a railroad at great expense in order to get this timber to one of his plants.

Wright and Young are citizens of Brunswick county, engaged for the most part, in farming.

The deeds on which Camp relies are identical in both cases, save in certain details having no material bearing upon the questions at issue, the deed in the Young case being as follows:

"THIS DEED, Made this 24th day of January, 1895, between V. A. Young, B. C. Brown and M. L. Brown, his wife, of the county of Brunswick, State of Virginia, parties of the first

part, and Camp Mfg. Co., a corporation of Isle of Wight county, Virginia, party of the second part, witnesseth: That for and in consideration of the sum of Two Hundred & Fifty Dollars (250.00) to be paid as follows, to-wit: Eighty-Three and 33/100 Dollars (83.33) cash, at and before the signing, sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the balance in the following installments, due at the following dates, to-wit:

"$83.33 in six Months from date.

"$83.33 in One Year from date.

"The said parties of the first part hereby grant, bargain, sell and convey, in fee simple and with general warranty, to the said party of the second part, their assigns or successors, all the pine timber 12 inches in diameter across the tree stump, and larger, at the time of cutting, on the following described land:

"Adjoining land of L. W. Rainey, W. W. Doyle and V. N. Jolly. The timber on the East side of the homestead is not included in this contract.

"The said parties of the first part hereby covenant with the said party of the second part, its successors or assigns, that they are seized of said timber in fee simple, that the same is free from all incumbrance whatever, that they will execute such further assurances as may be necessary to give a good and sufficient title to the said party of the second part for the said timber, and that said party of the second part shall quietly use, enjoy and occupy the same under this contract.

"It is agreed that the said party of the second part, its assigns or successors, shall have the right to erect such buildings on said land as they see fit, and to build, use and operate railroads, tramways or bogy roads across the lands of the said parties of the first part, for the purpose of removing said timber, or anything else which they now, or may hereafter, wish to carry over said railroads, tramways, etc., and they may use such material from said land along said roads, tramways, etc., as may be necessary or convenient to build and maintain the same, and they shall have the right to remove the said buildings, railroads, tramways, etc., from said lands within 5 years after ceasing to operate, use or occupy said buildings, railroads, tramways, etc. The said party of the second part, its assigns or successors, shall have 5 years from the date of this deed in which to remove the timber herein conveyed from said land, and if they shall fail to remove said timber in said time, they may have such further time in which to remove the same as they may desire: provided, however, that they pay interest to the said parties of the first part, or their assigns, at the rate of six per cent. per annum on the amount of the purchase price, above mentioned, from the expiration of the said 5 years, until they remove the said

timber. And the parties of the first part shall pay all levies, taxes, assessments and dues upon said land or timber, until the said timber shall be removed.

"Witness the following signatures and seals the day and year first above written.

"V. A. Young [Seal]
"B. C. Brown [Seal]
"M. L. Brown. [Seal]."

The bill in the Young case was filed to enjoin and restrain Young and others from cutting and removing the timber which Camp claims under the foregoing deed, and to reform said deed so as to sufficiently describe the land upon which said timber is located. While the bill in the Wright case was filed to set aside a similar deed from Wright to Camp, conveying certain timber described therein, on the ground that said deed was procured by fraud and is null and void and constitutes a cloud upon Wright's title to said timber and the land upon which the same is located. The deed in the Wright case is dated October 9, 1897, and provides that Camp, his assigns and successors, "shall have seven years from the date of said deed in which to remove the timber herein conveyed from said land," instead of 5 years as in the Young case. It is agreed that Camp had the right to cut and remove the timber from the Young and Wright tracts at any time within five and seven years, respectively, from the dates of said deeds, but that none of said timber was cut within said time limits. Camp paid Young the interest as provided in the Young deed for a period of four years from the expiration of said five years, and tendered the interest money to Wright every year after the expiration of said term of seven years and to Young each year after January 24th, 1904.

Barring the preliminary questions raised by the pleadings, the questions for consideration and decisions arise out of the construction of the two timber deeds above referred to.

PRELIMINARY QUESTIONS.

For reasons which appear sufficient, the court overrules the exceptions to the bill in the Young case, and the demurrer to the bill in the Wright case.

And for like reasons the court is of the opinion that J. A. Wright is an incompetent witness in the Wright case, and cannot testify either in his own behalf, or in behalf of any other person having an interest adverse to Camp, concerning the subject matter of that suit. Code of Virginia, 3348.

MAIN QUESTIONS.

Standing Timber—Real Estate.—Growing trees are realty and

may be limited as such, and deeds and contracts concerning them are governed by the laws applicable to that kind of property. Stuart *v.* Pennis, 91 Virginia 688; Same *v.* Same, 100 Virginia 612, 796; Midyette *v.* Grubbs (N. C.), 58 S. E. 796.

TIMBER TITLES DEFEASIBLE.

Whenever, in an instrument conveying standing timber, there is a clause either prescribing or granting a certain time in which the vendee should or might "cut," or "remove," timber, the grantee has no title whatever to any timber not "cut," or "removed," at the expiration of said period.

The Supreme Court of West Virginia, in Adkins *v.* Huff, 3 L. R. A. (New Series) 649, says: "The authorities are practically uniform in holding that an instrument, granting standing timber, and containing a clause requiring or permitting it to be removed within a specified time from the date of the grant, gives no absolute and unconditional title to the property. * * * By the great weight of authority, it is determined that no right or title exists in the grantee after the expiration of the time specified, in the deed or contract. No distinction seems to be made in this respect between rights conferred by *deed,* and those conferred by * * * *contracts,* which have not the form, nor all the requisites of a deed." And in a note to this case it is said that this statement of the law "is supported almost unanimously by the cases which pass upon the questions."

In Salstonstall *v.* Little, 90 Penn. St. 422, a deed for land reserved to, "the parties of the first part hereto, their heirs and assigns, all the pine timber on the aforesaid * * * tracts, together with the right and privilege to cut, remove, take and carry away the same, or any part thereof, at any and all times, also the right of ingress and egress at any and all times, for the space or term of twelve years, from the date first above written, for the purpose so as aforesaid." The court said: "It was a reservation of the timber for twelve years, and no longer, after that time, the trees remaining passed with the grant of the soil to which they were attached."

In McIntyre *v.* Barnyard, 1 Samford's Chancery Rep. 32, the New York court construed a deed whereby the land owner "granted, bargained, and sold" to certain parties, and to their executors, administrators, and assigns, "all the pine timber standing or being" on certain land. Then followed an *habendum* of said timber to them and their heirs, executors, etc., "Together with the right of entering upon the land until January 1, 1841, to cut and remove the said timber." It was held, that this latter clause was designed to limit the whole grant; and that the object of the grant was the sale of all the pine logs, which should be taken off by January 1, 1841, and nothing beyond that date.

"It was only by this construction that we can give full scope to the *whole intention* expressed by the instrument; and, at the same time, we relieve it from the irrational consequences to which the defendant's construction inevitably leads."

In Stuart *v.* Pennis, 91 Virginia 688, there was a contract for the sale of certain timber, which contained the following sentence: "Three years is the time allowed for removing the timber from land." The court says: "The vendee had the right, if he chose to exercise it, to let the trees remain standing upon the land for a period of three years."

And in Hughes *v.* Tinsley, 80 Virginia 259, there was a written contract, whereby the vendor sold "all the timber on certain land (except the chestnut timber), the vendee to have four years time in which to cut said timber," from the date of the contract. It was held that, "The right to cut timber under the contract ceased at the expiration of the four years." And the court further said: "Under the plain terms of these agreements, the right of the defendants to cut wood on the land of the plaintiff, in the bill mentioned, has ceased," and it was ordered that the injunction theretofore dissolved be reinstated.

This doctrine is supported by an array of authorities, among which may be mentioned the following: Jackson *v.* Hardin (Ky.), 87 S. W. 1119; White *v.* Foster, 102 Mass. 379; Pease *v.* Gibson, 6 Maine 84; Clarke *v.* Guest (Ohio), 43 N. E. 863; Boisanbin *v.* Read (N. Y.), 1 Abb. App. 161; Strong *v.* Eddy, 40 Vt. 550; King *v.* Merriman (Minn.), 35 N. W. 570; Hicks *v.* Smith (Wis.), 46 N. W. 133; Mengal Box Co. *v.* Moore (Tenn.), 87 S. W. 417.

It is true that there are a few authorities which deny the correctness of this proposition. See Hoit *v.* Stratton Mills, 54 N. H. 100.

It will be observed, however, that the doctrine enunciated in Adkins *v.* Huff and the other cases to the same effect, *supra*, is based upon the *intentions* of the *parties* as expressed in the instrument, *and does not apply when there are subsequent provisions in the instrument which negative such intention.*

Example of and Rules for Construction.

The Supreme Court of North Carolina, in Hawkins *v.* Goldsboro Lumber Co., 51 S. E. 853, says: "The true construction of the deed now before us is that the same conveys a present estate of absolute ownership in the timber, defeasible as to all timber, not removed within the time required by the terms of the deed."

The words "when cut" or "at the time of cutting" in timber deeds, referring to the size of the timber, mean that the vendee is entitled to all trees then on the land of the required size at the time of the grant and such others as may attain that size

by the time the timber is cut. Hardison *v.* Dennis-Simmons L. Co., 48 S. E. 588; Corey *v.* Lumber Co., 140 N. C. 462.

In the latter case the court held, that a deed reading, "All the pine timber that will measure 12 inches at the stump, 18 inches above the ground when cut," and, "a period of ten years in which to cut," passed the title to all the pine timber on the land which was found to be not less than 12 inches in diameter, 18 inches above the ground at the time of cutting.

The purpose of all construction is to sustain the intent of the parties and give effect to the same. Gibney *v.* Fitz-Simmons, 45 W. Va. 334.

Where there is any uncertainty in a deed the doubt must be resolved in favor of the grantee and most strongly against the grantor. Clark *v.* Roller, 104 Virginia 472.

That construction is to be avoided, if it can be consistently done, which would be unreasonably and unjust, and that construction wnich is most obviously just is to be favored at most in accordance with the presumed intention of the parties. Young *v.* Ellis, 91 Virginia 227.

An estate clearly granted or given in one part of an instrument will not be diminished or destroyed by words in another part of the instrument, unless the terms which diminish or destroy the estate be as clear and as explicit as those by which it was granted, or given. Wright *v.* Wright, 104 Virginia 8.

It is settled by the great weight of authority that, where there is a grant of timber and no time is specified in which it shall be removed, the law presumes that it must be cut and removed in a reasonable time. McRea *v.* Stillwell, 55 L. R. A. 53; Baxter *v.* Maddox, 32 S. E. 94; Andrews *v.* Wade, 6 Atl. 48; Liston *v.* Chapman, 91 S. W. 27.

In the case of Hawkins *v.* Goldsboro Lumber Co., *supra,* the deed provided that grantee should have "15 years from the time of the beginning to cut," in which to remove the timber; and further provided that, "grantee," should not be limited as to when it would begin to "cut." The court ruled in effect that the clause giving unlimited time in which to commence cutting was void, but upheld the grantee's title to the timber and required that the cutting be commenced within a "reasonable time." The doctrine of "reasonable time," was also applied by the same court in Bunch *v.* Lumber Co., 134 N. C. 116, where there was an absolute conveyance with "five years from the time of beginning to cut," in which to remove the timber.

While the end of all construction is to effectuate the intention of the parties, and to that end the entire paper must be considered, still if the granting clause in a deed be clear and explicit in reference to the estate granted, then nothing further on in the

deed will change it, because the two apparent intentions cannot be reconciled, and the first must prevail. 13 Cyc. 620.

CLAIMS OF PARTIES.

The theory of counsel for Wright and Young is that the title to the timber never vested in the grantee, or if it vested that it reverted to the grantors at the expiration of the first period of years; and that the extension clause is void for indefiniteness and uncertainty, and for other causes.

The court is of the opinion that counsel's position on the first proposition cannot be maintained. The deed no where states in terms that the title to the timber shall revert at the expiration of the first period of years; and the doctrine, above referred to, that the title does so revert, where there is no such provision, is based upon the *whole intention of the parties as expressed in the entire instrument.* The subsequent clause, in these deeds, giving Camp such further time as he may desire, etc., negatives such intention. The deeds grant the timber, in fee simple, with general warranty, and with the usual covenants of title, with five and seven years, respectively, in which to remove same.

A court of chancery is slow to lend its ear to a grantor in such a deed, who further solemnly covenants therein that if grantee fails to remove the timber within said time *he may have such further time as he may desire* in which to remove same by paying 6 per cent. interest upon the purchase money, when he says that it was his purpose and intention that grantee's title to the timber should revert to grantor if the former failed to remove the same within the first period of time granted. Certain it is that Camp never contemplated or intended, that his title would so revert, provided he paid or tendered the interest money, which he did. And it is manifest from the very language of the deed that neither of the parties desired, or intended, at the time of its execution, that the grantee's title to the timber, should so revert at the expiration of the first period, or within any reasonable time thereafter, provided the grantee paid the interest on the purchase money; and this is true whether the extension clause be void or not.

Besides, in the Young case, the grantors have by their conduct in accepting the interest money, for four years, negatived the idea that they intended that the title should revert to them at the end of the first period.

"There is no surer way to find out what the parties meant than to see what they have done." 2 Page on Contracts, § 1126.

There is no merit in the contention of counsel, that there is a distinction between "cutting," and "removing," and that the word "remove" as used in the extension clause is applicable only to timber that has been "cut," before the end of the first period.

The word "remove" as used in the first clause, necessarily includes "cutting," and there is no reason for applying a different meaning to it in the extension clause.

It is also contended with great earnestness that the extension clause is of no effect unless the "cutting," or at least *some* of the cutting, has been done during the first period; nor even then unless the grantee has used *due diligence* during the first period. In support of this proposition the case of Norfolk Lumber Co. *v.* Smith, 59 S. E. 543, is cited. The record shows that Camp, considering the nature and extent of his business, the capacity of his mills and the conditions of the market, has been diligent in cutting and removing all the timber owned by him, including that in controversy in these suits.

The decision in the Smith case was based solely upon the peculiar language of the contract then before the court and no reference was made to the general subject of timber contracts. The Smith agreement used the words, "shall have four years to *cut, haul* and *remove* said timber," from the land; and, "if longer time is desired to *remove* said timber, etc."

The use of the words "cut" and "haul" in the first and their omission in the extension clause, and the use of the term "remove," alone therein, may have justified the court in holding that the failure of the grantee to cut some of the timber during the first four years, had caused his right to the timber to expire. But to apply this doctrine to extension clauses generally would be to contravene the general intent and purposes of the deeds in the principal cases, to refuse to recognize the nature and necessities of the modern timber business, and to destroy millions of dollars invested in good faith under similar contracts. A ruling so narrow and so harsh could not receive the approval of this court.

The theory of counsel that the extension clause, *construed literally and alone is void,* seems to be sustained by authority as well as reason, *to the extent that, so construed, a court cannot enforce it.* Said clause should, however, when construing the entire instrument be read as a part of the deed, in order to ascertain the real purpose and intention of the parties.

The effect of the language used is to give such time as the grantee, its *assigns, or successors, may desire.* And time here means *timber,* since the lumber to be *cut* is timber 12 inches in diameter and larger at the stump, *at the time of cutting.* Who will do the desiring? The corporation, or one of its assigns, or one of its successors? Which assignee, which successor? The fifth, or the twenty-fifth? What is to hinder the grantee and its successors from waiting 500 or 1000 years, or even longer, be-

fore commencing to "cut." They can wait as long as they *may desire,* to wait. Surely such a grant is uncertain and indefinite.

In Cheelie *v.* Grimes (N. H.), 56, Atl. 742, the contract was for *five lots,* which one of the parties was to "pick out," from certain designated lots. This was held to be worthless because too indefinite. And yet it was clear there that the party was to get *five lots,* but here no one knows what timber of the dimensions named will be on the land, when the "cutting," begins, nor when, if ever, the cutting will begin.

In Pfistner *v.* Bird, 4 N. W. 625, grantor sold vendees, "all of the pine timber that they may choose to take off." Court held that no title passed to the timber.

In Libby *v.* Thornton, 64 Mo. 479, deed conveyed, "all the real estate, wherever situated, that I now own, or may *own at the time of my decease.*" The grant was held void for uncertainty, on the ground that the subject of the grant could not be identified from the description in the deed.

The court is further of the opinion that the extension clause, *construed literally and alone* is void, because it is contrary to the intent and purpose of the parties as indicated in the entire instrument.

Wright and Young are farmers and it is to be presumed that they will some day want absolute control of their land, and of everything that grows upon it; so that they may, if deemed expedient, use the land for agricultural purposes. Camp did not buy the timber for speculation, nor as a permanent investment; but to manufacture into lumber. He is running his plants to their full capacity in the day time and operating one of them in the night time. The deed itself provides that grantee may erect buildings, build and use and operate railroads, tramways, etc., for the purpose of removing the timber, and shall have the right to remove all such buildings, railroads, tramways, etc., from the land at any time within five years after ceasing to operate. When the deed is read in the light of the circumstances which surrounded the parties it is apparent that the intent of the parties and the real purpose of the deed were that Camp should have such further *reasonable time as he might desire,* having a due regard for the extent of his business, and his methods of operating the same; and not that Camp, his assigns and successors, should have until the *end of time,* if they chose to so *desire,* in which to remove the timber.

REASONABLE TIME.

What is a "reasonable time," where that doctrine applies, is a question of fact to be decided in that light of all facts and circumstances surrounding the transaction. McRae *v.* Stillwell, 55 L. R. A. 513.

The business of manufacturing lumber has, in the past thirty to thirty-five years, been revolutionized. In the beginning the work was done almost exclusively by the "portable mill," which could be hauled about the country by a few horses. These mills had to be located convenient to the timber which they were to manufacture, so that the output could be hauled, without great cost, on wagons or on wooden tracks, to deep water or to the railroad, where transportation to the market could be had. Then came the larger mill which was located on tide water and which was supplied with logs, by rafting them along the waters, which were tributary, to that upon which the mill was located.

It was only a question of time before the timber within hauling distance by horses, or mules, to either water or rail transportation, was practically exhausted, and a new condition confronted the lumbermen. There were immense quantities of timber in the territory remote from the railroads, but there was no transportation, and without transportation, the stumpage was almost valueless to the land owners and the lumbermen as well.

These conditions forced the lumbermen to erect large and expensive plants and to build railroads into the territory where the timber stood. This they could not afford to do, unless they could purchase the timber in a manner which would conform to the new conditions, which confronted them. As a rule the farmer welcomed the lumberman, who came to buy something which, heretofore had never been convertible into ready cash. Unlike some of the western states where stumpage can be purchased by thousands of acres in one body, the territory in southside Virginia is so divided into ownerships of small tracts, that it is necessary to purchase from hundreds of farmers in order to justify the erection of a *modern saw-mill plant.*

This condition brought about the necessity for contracts conveying the stumpage to the purchaser with a more or less indefinite time for removal; as in the case at bar. The parties selling timber usually had knowledge of the manner in which the lumberman must necessarily cut and remove the timber sold by them; and the deeds contained clauses authorizing the building of railroads with the right to haul over them anything which the grantee might wish to carry over them.

Under contracts of this character one of the most important industries of Virginia and of the South has been built up, requiring the investment of many millions of dollars. And upon the faith of such contracts, innocent investors, have, in many instances, acquired valuable property rights.

As has been aptly said, "the construction of timber conveyances is an evolution of modern law, and the courts have generally kept as their *guiding star the intentions of the parties,* viewed in the light of the subject matter and of the conditions

surrounding them, and after ascertaining that intention, have carried it into execution, regardless of the technical constructions of those who would have such deeds avoided."

In determining what is a "reasonable time," the court should also consider the language of the instrument under which the title to the timber is acquired, construing the same most strongly against the grantor. Clark *v.* Roller, *supra.*

It must be apparent that what would be a "reasonable time" under the deeds we are now construing would be absolutely *unreasonable,* if the grantees were operating a "portable mill" within hauling distance of a railroad and were the owners of only a few tracts of timber at any one time in the same locality, acquired by deeds which contained none of the liberal provisions contained in these deeds.

The court will take judicial notice of the operations of a large manufacturing concern.

PRINCIPLES APPLIED TO THE CASES AT BAR.

By applying the foregoing principles in the principal cases the court has no difficulty in reaching the conclusions which follow and deciding:

First. That the plaintiffs have failed to establish fraud in the Wright case.

Second. That the two deeds in question passed to Camp all pine timber *then on the land,* of the size of 12 inches in diameter across the tree stump and larger at the time the trees are reached in the process of cutting; and vested in the grantee the present absolute title to such trees as were that size when the deeds were executed, and preserved the smaller trees until they should grow to that size, *defeasible* as to all timber *not removed within the time* required by the terms of the deed.

Third. That the title to said timber has never reverted to the grantors and that Camp is now entitled to a "reasonable time," within which to cut and remove the same from said land; which "reasonable time," the court adjudges to be ten years from this date, provided Camp shall pay to the grantors interest on the purchase money for each year he may allow said timber to remain on said land, after the expiration of the first period of years granted in said deeds.

Fourth. That said deeds convey to Camp the right to erect such buildings on said lands as he may see fit, and to build, use and operate railroads, tramways, or bogy roads, across the same for the purpose of removing said timber or anything else which they may wish to carry over said railroads, tramways, etc., and the right to use such material from said lands along said roads and tramways, as may be necessary or convenient to build and maintain the same. That said rights may be exercised by Camp

until he shall have removed said timber, and *afterwards so long as it may be necessary* for him to exercise them in the convenient prosecution of his business in that section of country in which said lands are located.

Decrees will be entered in these causes in conformity with the views herein expressed.

Note.

Judge West in a letter to "The Law Register" says:

"Counsel for Wright & Young in these cases gave notice that they would apply to the Supreme Court of Appeals, for an appeal from my decrees, but, the record has not yet been presented to one of the judges of the Supreme Court.

"There is a suit now pending in the Supreme Court, of North Carolina, under the style of Hux *v.* Camp, which involves the validity of a timber deed, which is a duplicate of the one construed in the principal cases. This case has been argued and submitted, and the decision of the North Carolina Court is expected every week. The Superior Court in North Carolina decided the case against Camp, following, as I understand, Norfolk Lumber Co. *v.* Smith, 59 Southeastern 543.

"With kind regards, I am,

"Very truly yours,

"J. F. WEST."